Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Octatron, Inc. and Chang Industry, Inc.	)	
Requests for Waiver of Sections 15.245(b),	)	ET Docket No. 05-356
15.247(e), and 15.249(a) of the	)	DA 05-3339
Commission's Rules	)	

To: Office of the Secretary
Attn: Office of Engineering and Technology (OET)

Opposing Comments

Warren C. Havens ("Havens") and Telesaurus Holdings GB, LLC ("Telesaurus") (in which Havens holds majority controlling interest) (together, "LMS Wireless," their DBA ["LMSW"]), hold the majority of the LMS Multilateration ("LMS-M") 'A'-block licenses in the nation and one LMS-M 'C'-block license.[1] This block is 6 MHz of the 902-928 MHz band in which unlicensed devices may operate, including under amended Part 15 rules adopted in the *Second Report and Order*, released May 30, 2002, in the above-captioned docket *("Second R&O").* For reasons given herein, LMW Wireless opposes grant of the above-captioned waiver request (the "Waiver Request") by its filers (the "Petitioners").

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[1] These LMS-M license holdings give Havens and Telesaurus direct interest in the matters of this proceeding.

Interest and Standing

The Petitioners did not restrict their request to parts of 902-928 MHz exclusive of the LMS-M sub bands, nor to any limited part of the nation, thus, the Waiver Request involves use of all of the LMS-M spectrum licensed to Havens and Telesaurus.

Background and Arguments

LMS-M is governed by Subpart M of Part 90 rules and as stated therein, has priority over Part 15 operations in the LMS-M spectrum, which may not interfere with LMS-M operations. LMS-M is the first Intelligent Transportation System ("ITS") radio service, the second being the 5.9 GHz DSRC service.[2] While there is a "safe harbor" in which a Part 15 device is deemed to be not interfering, this is based on such device not exceeding Part 15 power limits, as well as transmitter-height

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[2] 47 CRT §90.350. LMS includes LMS-M (defined above) and non-multilateration LMS, which combined use all of 902-918 MHz. Intelligent Transportation Systems ("ITS") radio services were created by the FCC to provide critical services to motorists on US roadways nationwide that include safety of life, reduced congestion and loss of work time, pollution reduction, etc. They are unique services in this regard. LMS Wireless has, in dozens of FCC filings[*] (and presentations to ITS America, NTIA, AAR, DHS, APCO, etc.) made clear its commitments to use of its LMS-M spectrum for core ITS applications.[*See, e.g., filings by Havens and Telesaurus in RM-10404 ("Progeny" request), 92-257 (public coast spectrum), 01-90 (5.9 GHz DSRC), 00-32 (4.9 GHz), 02-135 (Spectrum Task Force), 99-231 (Part 15).] LMS Wireless has spent in the "seven figures" in development of appropriate technology and plans for this purpose. LMS Wireless plans to build and operate the wide-area LMS-M systems in close integration with 5.9 GHz DSRC, which are short-range systems. LMS Wireless is using certain OFDM standards-based technology for its LMS-M systems, and will use the standard established for DRSC (802.11p), which is also OFDM..

constraints.[3] (In addition, the Commission made clear in the orders resulting in the current LMS rules,[4] that this safe harbor was established on the assumption that part 15 devices would be localized [such as in a home, office, whether a single device or in a WLAN] and not located close to LMS-M base or mobile transmitters.) Further, Part 15 devices may not interfere with non-multilateration LMS ("LMS-N") stations operated by highway authorities, railroads, and other transportation system operators. LMS-M and LMS-N together use all of 902-928 MHz.

The Commission's made clear its strong interests in the success of the two ITS radio services, LMS and DSRC, as stated in these services respective rulemaking dockets. The success of LMS is based upon maintaining its priority rights to use the subject spectrum which rests in large part upon maintaining the power limitations set in Part 15 rules for unlicensed devices used in 902-928 MHz which are integrated into LMS rules, including in §90.361.[5] In contrast, *Petitioners give only bald assertions* in the subject Waiver Request, as to their "need" of a waiver, their intent and capability to serve public safety needs, the existence of such needs, their assertion that analog is better for satisfying the need than digital, etc. Any increase in power levels by any measure—including what is requested in the Waiver Request--verses the power levels authorized when the LMS rules were

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3 47 CFR, §90.361.

4 PR Docket No. 93-61.

5 LMS-M systems are more sensitive to Part 15 devices than LMS-N systems, since the former transmit over very wide areas from high sites to mobile devices (resulting in low average receive signal strength by the mobile devices) and the latter transmit at very close range to transponders where the receive signal level is very high and could rarely if ever be subject to interference by Part 15 devices in the general vicinity.

promulgated and put into effect, adversely and seriously effects LMS operations, especially LMS-M, from the planning stage to actual operations.

Further, any change in Part 15 rules in 902-928 MHz adversely affects LMS-M operators requirements under §90.353(d) last sentence, which places a condition on LMS-M licensees (as interpreted in related rulemaking Orders) to plan and deploy their systems to attempt to minimize interference to Part 15 devices. This cannot be done, certainly not efficiently, when the "target changes," that is, when the subject Part 15 rules change or are waived. LMS-M technology and equipment, and system deployments, being developed at large expense and endeavor by LMS Wireless is based upon the LMS rules as they exist which, as noted above, are in part based on Part 15 rules including the power level. These will all be adversely affected if Part 15 devices use higher power.

In addition, the Petitioners fail to provide needed support. Their Waiver Request is basically bald assertions, and these fail to satisfy any waiver standard. They provide no support from any public safety entity, nor that analog is better than digital as they assert, nor that there is an need for their products as asserted, nor why Public Safety entities would rely on Part 15 unlicensed equipment, when they have licensed spectrum.

The opposition is for a number of reasons (1) grant of the Waiver Request would create adverse affect on the LMS plans and operations of LMS Wireless, and other LMS licensed operations in the LMS multilateration sub-bands. ( ) the

waiver is overbroad and not narrowly tailored for a unique situation that the requester demonstrates it has capability to pursue: if it essentially a request for a rule change, and that is inappropriate in a waiver request.

Pending Court Appeal: Havens already has one case pending before the DC Circuit Court that also involves changes to the Part 15 rules. See *Havens v. FCC*, No. 03-1247 (D.C. Cir. filed Aug. 20, 2003)(requesting review of Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices, *Memorandum Opinion and Order*, 18 FCC Rcd 11,661 (2003)). The Commission and any member of the public, via the publicly accessible PACER system (that allows access to principal filings in cases within the US court system nationwide) has access to Havens filings in this Case that set forth the reasons why the FCC may not equitably or lawfully under its rules and the Communications Act change Part 15 rules in a manner that adversely affects LMS licensees.

Respectfully submitted,

[Filed Electronically. Signature on File.]

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